# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 22372 of 2007

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MANILAL SHUKHLAL KALAL - Petitioners**
**Versus**
**C.S. HOTELS PVT. LTD. (HOTEL KARNAWATI) & 1 - Respondents**

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**Appearance :**
MR TR MISHRA for Petitioner : 1,
DS AFF.NOT FILED (N) for Respondent : 1,
MR SACHIN D VASAVADA for Respondent : 1,
MR HEMANT MAKWANA AGP for Respondent: 2,

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**CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

**Date : 29/10/2007**

**ORAL JUDGMENT**

1. Rule. Mr. Vasavada, learned counsel waive service of Rule on behalf of respondent No. 1 and Mr. Makwana, learned AGP waives service of Rule on behalf of respondent No. 2. By consent, Rule is fixed forthwith.

2. Shri Mishra, learned counsel appearing for the petitioner does not pressed this petition so far as prayer 5(A) is concerned. Accordingly, now this petition is confine to only prayer 5(B) and (C) as the prayer 5(A) would in fact does not survive in view of the judgment and order passed in Special Civil Application No. 21171 of 2006 and 21167 of 2006.

3. Shri Mishra, learned counsel has submitted that the concerned Labour Court passed an Award in Reference (LCA) No. 1754 of 1992 on 11.11.1993 ordering reinstatement and back wages in favour of the petitioner. The Hotel Management – respondent No. 1 herein filed an application under Rule 26(A) of the Industrial Disputes (Gujarat) Rules, 1966 for setting aside the ex-parte award. The said application was filed belatedly in the year 1997. The Labour Court, however, set aside its own order and restored the matter as the earlier order was ex-parte. The said restoration order was challenged by the petitioner by preferring Special Civil Application No. 7220 of 1998, which came to be allowed by this Court (Coram: N.N.Mathur, J.)(as he then was) vide order dated 8.12.1998. This order was taken into Letters Patent Appeal by the concerned Hotel Management being

Letters Patent Appeal No. 219 of 1999 with Civil Application No. 1249 of 1999. The said Letters Patent Appeal was admitted and the award was stayed by the Division Bench. Order whereof is produced at Page No. 15 at Annexure – C. Ultimately, the Letters Patent Appeal came to be dismissed for want of prosecution on 9.8.2005 by the Division Bench (Coram: R.S.Garg & Ravi R. Tripathi, JJ..) and therefore, the concerned workman had to again take the proceedings in this Court being Special Civil Application No. 21256 of 2005, which came to be disposed of with appropriate directions to the concerned authority. The workman has also filed Recovery Application and ultimately, the recovery certificate was ordered to be issued which is at Annexure-G. The same is not being implemented and therefore, this petition is filed.

4. Shri Vasavada, learned counsel appearing for respondent No. 1 – Hotel Management submitted that in fact, this recovery certificate is also subject matter of challenge as the attachment notices issued thereon is forming part of over all challenge by the Hotel in Special Civil Application No. 21167 of 2006. The aforesaid petition along with other allied matters have been disposed of by this Court vide common judgment and order dated 24.9.2007 and therefore, the directions contained therein would also govern in this matter.

5. Shri Mishra, learned counsel appearing for the petitioner in his rejoinder submitted that this petition is slightly different then the earlier matter. Apropos court's

observation in the petitions were preferred by Hotel Management challenging the ex-parte awards and orders passed, whereof the recovery certificate and attachment notices were issued which were in fact subject matter of the aforesaid petition. So far as present petition is concerned, the ex-parte award has not been challenged at all and therefore, it has contained finality and appropriate directions deserve to be issued.

6. Heard learned counsel for the parties. It deserves to be noted that this Court has disposed of the entire group of petitions, wherein Special Civil Application No. 21167 of 2006 was one of the mattes and issued certain directions. In addition to those directions, this petition deserves to be disposed of by giving following directions which are in consonance with the direction issued in the common judgment and order dated 24.9.2007 passed in aforesaid group of matters.

(i) The respondent No.2 - the District Collector / Recovery Officer is directed to enforce the Recovery Certificate at Annexure – G dated 26.6.2006 under the provisions of the Bombay Land Revenue Code as if it is land arrears from the respondent C.S.Hotel Pvt. Ltd. while enforcing the certificate, the respondent No. 2 shall bear in mind that no personal properties of either Managing Director or Directors, wherein the preset Hotel Management has no share or interest be attached.

(ii) The respondent No. 2 – District Collector / Recovery Officer shall be at liberty to attach all the properties or

any of the properties owned and in control of the C.S.Hotel Pvt. Ltd. And other properties, wherein C.S.Hotel Pvt. Ltd has its interest.

(iii)The concerned workman shall filed appropriate affidavit stating before the authorities i.e. District Magistrate/ Recovery Officer as to whether he has received any amount against the recovery certificate dated 26.6.2006 and if yes, how much amount. If he has received any amount against the recovery certificate, then that shall be adjusted before disbursing the amount.

(iv)The entire exercise shall be over within a period of three months from the date of receipt of this order.

(v)Liberty is granted to the parties to move this court in case of difficulty.

7. In view of the aforesaid directions, the petition is allowed. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(S.R.BRAHMBHATT, J.)

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